

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2015050560

ORDER VACATING UNEXPEDITE
HEARING DATES

On May 1, 2015, Student filed a Due Process Hearing Request against Montebello Unified School District that contained seven non-expedited issues for hearing and one expedited issue, Issue 8. On May 18, 2015, the Office of Administrative Hearings issued a Scheduling Order and Notice of Expedited and Non-Expedited Due Process Hearing and Mediation. The Scheduling Order set this matter on a dual calendar, with the expedited matter being set for hearing on May 28, 2015.

On May 19, 2015, Student sent to OAH a dismissal without prejudice of Issue 8.

APPLICABLE LAW

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

DISCUSSION

Here, Student's complaint raises eight issues. Student's Issue 8 states that District during the 2013-2014 school year suspended Student for in excess of 10 school days without convening a manifestation determination team meeting. This issue falls squarely within the

language of 20 U.S.C. § 1415(k)(3) which triggers the expedited hearing process. OAH has no discretion to deem the matter unexpedited simply because the parties' stipulate that it is so. In this matter, Student has removed the expedited issue for hearing by dismissing without prejudice Issue 8, the sole expedited issue for hearing. Accordingly, all prehearing conference and hearing dates for the expedited portion of this case are vacated.

ORDER

The request to unexpedite the hearing is granted and the expedited prehearing conference and hearing dates are vacated. This matter shall proceed as to the non-expedited dates in the May 18, 2015 scheduling order.

DATE: May 19, 2015

/s/

PETER PAUL CASTILLO

Presiding Administrative Law Judge
Office of Administrative Hearings